

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

NETSCAPE COMMUNICATIONS CORP.,)
Plaintiff,) Case No. 1:09-cv-225-TSE-TRJ
v.)
DEclarAtion oF
THOMAS J. SCHELL IN SUPPORT
OF VALUECLICK, INC'S AND
FASTCLICK, INC.'S MOTION
TO COMPEL PRODUCTION
PURSUANT TO FED. R. CIV. P. 37(a)
VALUeCLICK, INC., MEDIAPLEX, INC.,
FASTCLICK, INC., COMMISSION
JUNCTION, INC., MEZIMEDIA, INC., and
WEB CLIENTS, L.L.C.,)
Defendants.)

Pursuant to 28 U.S.C. §1764, I, THOMAS J. SCHELL, hereby declare as follows:

1. I am an attorney with the law firm of Bryan Cave LLP, legal counsel to ValueClick, Inc. (“ValueClick”) and FastClick, Inc. (“FastClick”, collectively, the “Defendants”) in the above action.

2. Annexed hereto as Exhibit A is a true and correct copy of the portion of Netscape Communication Corp.'s ("Netscape") privilege log describing documents 16, 33, 41, 44, 51, 84, 85, 93, 100, 2439, 2440, 2441, and 2442, production of which documents is sought by Defendants in the present motion.

3. Annexed hereto as Exhibit B is a true and correct copy of the portion of Netscape's first supplemental privilege log describing document 2551, production of which document is sought by Defendants in the present motion.

4. Annexed hereto as Exhibit C is a true and correct copy of a letter dated July 2, 2009 from Thomas J. Schell of Bryan Cave to C. Brandon Rash, Esq., counsel to Netscape.

requesting production of documents 16, 33, 41, 44, 51, 84, 85, 93, 100, 2439, 2440, 2441, 2442, and 2551 (the “Documents”), which are the subject of the present motion to compel.

5. Annexed hereto as Exhibit D is a true and correct copy of the Joint Defense & Common Interest Agreement between Sun Microsystems, Inc. and its subsidiaries and America Online, Inc., including its subsidiary Netscape and Netscape’s subsidiaries, signed September 30, 1999.

6. Annexed hereto as Exhibit E is a true and correct copy of an e-mail dated July 10, 2009 from Thomas J. Schell of Bryan Cave to Umar Arshad, Esq., counsel to Netscape, reiterating his request for the Documents.

7. Annexed hereto as Exhibit F is a true and correct copy of an e-mail chain dated July 13, 2009 through July 16, 2009 between attorneys at Bryan Cave and Umar Arshad, Esq., counsel to Netscape, regarding the production of the Documents.

8. Annexed hereto as Exhibit G is a true and correct copy of United State Patent Number 5,761,662, entitled “Personalized Information Retrieval Using User-Defined Profile,” which issued on June 2, 1998.

9. Annexed hereto as Exhibit H is a true and correct copy of the Strategic Development and Marketing Agreement between America Online, Inc. and Sun Microsystems, Inc., signed November 23, 1998.

10. Bryan Cave, as counsel to ValueClick and FastClick, hereby certifies that it conferred in good faith with Netscape’s counsel in an effort to obtain the disclosure requested in the present motion to compel production without court action. Bryan Cave’s efforts in this regard are evidenced by the discussion with Netscape’s counsel set forth in the letter to C.

Brandon Rash, Esq. (see Exhibit C hereto), and emails to Umar Arshad, Esq. (see Exhibits E and F hereto).

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Executed this 17th day of July, 2009



THOMAS J. SCHELL